836.

SUPREME COURT OF THE UNITED STATES.

No. 84.

BERNARD McKENNA, PLAINTIFF IN ERROR,

VS.

CHARLES B. FISK.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

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S. D. Langtree, Print.

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837.

UNITED STATES OF AMERICA, *ss:*

[L. S.] The President of the United States, to the Judges of the Circuit Court of the United States, for the District of Columbia in the County of Washington, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court, before you, or some of you, between Bernard McKenna, plaintiff, and Charles B. Fisk, defendant, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears: we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on second Monday of January next, in said Supreme Court, to be then and there had and held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States should be done.

Witness the Hon. Roger B. Taney, Chief Justice of said Supreme Court.

Issued this 29th day of December, 1841.

W. BRENT, *Cl'k.*
Ct. Ct. D. C., City Washington.

DISTRICT OF COLUMBIA, *sct:*

The United States of America, to Charles B. Fisk, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, for the District of Columbia in the county of Washington, wherein Bernard McKenna is plaintiff in error, and you are defendant in error, to shew cause, if any there be, why judgment rendered against the said plaintiff in error should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the Hon. W. Cranch, Chief Judge of the Circuit Court of the District of Columbia, this 29th day of Dec., 1841.

Service acknowledged. JOS. H. BRADLEY,
Attorney for def't.

10 January, 1842.
[REC. LXXXIV. 1842.]

Copy Appeal Bond.

Know all men by these presents, that we, Bernard McKenna, John Foy and Philip Garmley, are held and firmly bound unto Charles B. Fisk, in the full and just sum of four hundred dollars, current money of the United States, to be paid to the said Charles B. Fisk, his certain attorney, executors, or administrators, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this twenty-ninth day of December, 1841.

Whereas, lately at a Circuit Court of the United States, for the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said Bernard McKenna was plaintiff, and the said Charles B. Fisk was defendant, judgment was rendered against the said plaintiff, and he having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Charles B. Fisk, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of January next.

Now the condition of the above obligation is such, that if the said Bernard McKenna shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue.

his
BERNARD ⋈ McKENNA, [L. S.]
mark.
JOHN FOY, [L. S.]
PHILIP GARMLEY. [L. S.]

Signed, sealed and delivered in presence of
C. W. McNAMEE.

Approved:

J. S. MORSELL.

30 Dec., 1841.

Style of Court.

DISTRICT OF COLUMBIA, *ss:*

At a Circuit Court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of November, being the twenty-second day of the same month, in the year of our Lord one thousand eight hundred and forty-one, and of the independence of the United States the sixty-sixth.

Present, the Hon. William Cranch, Chief Judge; Bucknor Thruston and James S. Morsell, Assistant Judges; Alexander Hunter, Esq., Marshal; William Brent, Clerk.

In the record of the proceedings of the said court, among others, are the following, to wit:

Parties.

BERNARD MCKENNA, *vs.* CHARLES B. FISK.

Be it remembered, that heretofore, to wit, on the twenty-seventh day of May, in the year of our Lord one thousand eight hundred and forty, the said plaintiff, by Brent & Brent, Esquires, his attornies, prosecuted and sued forth out of the Circuit Court here, the United States writ of capias ad respondendum, directed to the Marshal of the district aforesaid, in the words and of the tenor following, to wit:

Capias ad resp.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the Marshal of the District of Columbia, greeting:

We command you, that you take Charles B. Fisk, late of Washington county, if he shall be found within the county of Washington, in your said district, and him safely keep, so that you have his body before the Circuit Court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the fourth Monday of November next, to answer unto Bernard McKenna, in a plea, wherefore, with force and arms, &c., at the county of Allegany, in the State of Maryland, to wit, at the county of Washington, he broke into the store-house of the said Bernard, and seized, took, detained, and destroyed the goods and chattles, and articles of household of the said Bernard, then and there found, and being of a large value, and other wrongs to the said Bernard then and there did, against the peace, dignity and government of the United States, &c. Hereof fail not at your peril, and have you then and there this writ.

Witness, Wm. Cranch, Esq., Chief Judge of our said court at the city of Washington, the 1st day of May, anno Domini, one thousand eight hundred and forty.

Issued the 27th day of May, 1840.

B. & B. WM. BRENT, *Clk.*

And the aforesaid plaintiff, by his attornies aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said defendant, in the plea aforesaid, in form following, to wit:

Nar.

WASHINGTON COUNTY, *District of Columbia, to wit:*

Charles B. Fisk, late of the county of Washington aforesaid, yeoman, was attached to answer unto Bernard McKenna, in a plea wherefore, with force and arms, &c., at the county of Washington aforesaid, he broke into the store-house of the said Bernard, and seized, took, detained and destroyed the goods, chattles, and articles of household of the said Bernard, then and there found, and being of a large value, and other wrongs to the said Bernard then and there did, against the peace, dignity and government of the United States, and to the great damage of the said Bernard.

And thereupon, the said Bernard, by Brent & Brent, his attornies, complains, that the said Charles, heretofore, to wit, on the day of September, in the year of our Lord eighteen hundred and thirty-nine, at the county of Washington, in the District of Columbia, with force and arms, &c., seized, took, detained and destroyed the goods and chattles, to wit, one thousand gallons of spirituous liquors of different kinds; a large quantity of coffee and of tea; various clothing ready made for sale; two hundred bushels of Indian corn; all the promissory notes and accounts of sundry persons due to the said Bernard, to the amount of at least four hundred dollars; all the furniture, bedding and other articles in said store-house; and also the shantee, or store house, in which said goods and chattles then and there were found; the said shantee or store house being a temporary building erected by said Bernard, and to be removed by him, and not being part of or attached to the freehold or real; all of said goods and chattles, bills, bonds and accounts belonging to the said Bernard, then and there found, and being of a large value, to wit, of the value of two thousand dollars, and carried away and destroyed the same, and converted the same to his own use, and other wrongs to the said Bernard then and there did, against the peace, government and dignity of the United States, &c. And also, for that the said Charles, to wit, on or about the day of September, 1839, *with force and arms, &c.*, at the county of Washington in the District of Columbia, *broke and entered a certain other shantee or temporary store house of the said Bernard*, situate and being in said county of Washington, and then and there made a great noise and disturbance therein, for a long space of time, and then and there forced and broke open, broke to pieces, damaged and destroyed divers, to wit, bottles, barrels, hogsheads, jugs and demijohns, containing one thousand gallons of spirituous liquor of different kinds, of and belonging to the said Bernard, and

broke to pieces, destroyed, damaged and spoiled divers, to wit, one thousand pounds of coffee; two hundred pounds of tea; one hundred suits of ready made clothing; two hundred bushels of Indian corn; sundry promissory notes, bonds, bills and accounts due to said Bernard from sundry persons; and also, sundry planks, timbers, shingles and other materials in the construction of a certain shantee, also belonging to the said Bernard, then and there found, and of great value, to wit, of the value of two thousand dollars, and other wrongs to the said Bernard then and there did, against the peace, government and dignity of the United States, &c.

And also, during the time aforesaid, to wit, on the day and year aforesaid, at the county aforesaid, seized and took divers other goods and chattles, to wit, one thousand gallons of spirituous liquors of different kinds; a large quantity of coffee and tea; 200 bushels of Indian corn; fourhundred dollars in amount of promissory notes, bonds, bills and accounts due to said Bernard by different persons; sundry ready made clothing; and also a certain shantee, all of the goods and chattles, promissory notes, bonds, bills and accounts of the said Bernard, then and there found, and being of great value, to wit, of the value of two thousand dollars, and damaged, spoiled and destroyed the same, and other wrongs to the said Bernard then and there did, against the peace, government and dignity of the United States. By means of which said several premises, he the said Bernard saith, he is worse, and hath damage of four thousand dollars, and therefore he brings suit, &c.

BRENT & BRENT, *for plff.*

JOHN DOE & RICHARD ROE. } Pledges, &c.

At which mentioned fourth Monday of November, in the year of our Lord one thousand eight hundred and forty, and the day of the return of the aforegoing writ, comes into the Circuit Court here the said plaintiff, by his attorney aforesaid, and the marshal of the district aforesaid, to whom the said writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Marshal's return.

"Cepi:"

ALEX'R HUNTER, *Marshal.*

Defendant's appearance—Rule Plea and Imparlance to March term, 1841.

And the said defendant, being called, appears in court here by Joseph H. Bradley, Esq., his attorney, and thereupon, on motion of the said plaintiff, by his attornies aforesaid, it is ruled by the court here, that the said defendant answer to the declaration aforesaid of the said plaintiff, in the plea aforesaid, or judgment by the

court here will be entered against in default thereof; and the said defendant, by his attorney aforesaid, defends the force and injury, when and so forth, and prays leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, and to him it is granted; the same day is given to the aforesaid plaintiff, also.

At which mentioned fourth Monday of March, in the year of our Lord one thousand eight hundred and forty-one, to which said day the said defendant had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiff in the plea aforesaid, comes again into the Circuit Court here, as well the said plaintiff, by his attorney aforesaid, as the said defendant, by his attorney aforesaid; and the said defendant, by his attorney aforesaid, as before, defends the force and injury, when, &c., and saith that as to his breaking the close, store house, and shantee of him, the said plaintiff, and of expelling and removing him from the close, store house and shantee aforesaid, and of and destroying the goods, chattles, and divers coffee, tea, liquors of different kinds, ready made clothing, Indian corn, sundry promissory notes, bonds, bills and accounts, and sundry planks, timbers, shingles and other materials, in the declaration mentioned.

Plea of Not Guilty, and Issue joined.

And as to his comeing with force and arms, and whatever is against the peace, government and dignity of the United States, he, the said defendant, says, he is no wise thereof guilty, in manner and form as the said plaintiff above against him hath complained, and thereof he puts himself upon the country, and the said plaintiff, by his attorney, in like manner, and so forth.

Venire Facias.

Therefore, let a jury thereon appear before the court here, on the fourth Monday of November next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; and the same day is given to the said parties then and there, &c.

November Term, 1841.

And now, at this day, to wit, the said fourth Monday of November, in the year of our Lord one thousand eight hundred and forty-one, comes again into the Circuit Court here, as well the said plaintiff, by his attornies aforesaid, as the said defendant, by his attorney aforesaid; whereupon, for trying the issue aforesaid, it is ordered by the court here, that twelve persons from the pannel of petit jurors, returned to the court here by the marshal of the District of Columbia, be called, who, being called, come, to wit:

Jury.

1 Edmund Brooke,	7 Samuel Drury,
2 John L. Brightwell,	8 Edmund Hanly,
3 Ninian Beall,	9 John B. Ferguson,
4 Geo. W. Hopkins,	10 Thomas Owen,
5 John E. Neale,	11 Daniel Campbell,
6 Robert K. Nevit,	12 Simeon Matlock.

Verdict Not Guilty.

Who, being duly empannelled and sworn, to say the truth in the premises, upon their oath doth say, that the said defendant is not guilty of the trespass in the declaration within specified, as the said defendant hath within by pleading alleged.

Judgment of Court on Verdict.

Therefore, it is considered by the court here, that the said plaintiff take nothing by his declaration aforesaid; but for his false complaint against the said defendant, be in mercy, &c., and that the said defendant go thereof without day, &c. And it is further considered by the court here, that the said defendant recover against the said plaintiff the sum of two hundred and nine dollars and forty-six cents, for his costs and charges by him laid out and expended in and about his defence in this behalf sustained, to the said defendant, by the said court now here adjudged, &c.

Mem.

Memorandum.—Before the jurors aforesaid retired from the bar of the court here, the said plaintiff, by his attorney aforesaid, filed in court here the following bill of exceptions, to wit:

Plaintiff's Bill of Exceptions.

Plaintiff's Bill of Exceptions.

BERNARD MCKENNA, }
vs.
CHARLES B. FISK. }

At the trial of this cause, the plaintiff, to support the issue on his part joined, offered to give evidence by a competent witness, tending to prove that in the summer of the year 1839, the defendant, with a large force of armed men, came to the shantee, or store house, of the plaintiff, in Allegany County, in the State of Maryland, a place not within the jurisdiction of this court, and entered into the same, and then and there seized, took and carried away